

JOSEPH G. McGUINNESS - State Bar No. 115983
JEFFREY S. FLASHMAN - State Bar No. 161186
MCGUINNESS & ASSOCIATES
3858 Carson Street, Suite 301
Torrance, California 90503
Telephone: (310) 792-0495
Facsimile: (310) 792-0520

Attorneys for Creditor,
AA/Acme Locksmiths, Inc.

FILED
FEB 20 2019
UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

Case Nos. 19 - 30088 (DM)

19 - 30089 (DM)

Chapter 11

**OBJECTION OF CREDITOR AA/ACME
LOCKSMITHS, INC. TO FINAL ORDER
GRANTING OPERATIONAL
INTEGRITY SUPPLIER MOTION**

Date: February 27, 2019

Time: 9:30 a.m.

Courtroom:

☐ Affects PG&E Corporation

☐ Affects Pacific Gas and Electric
Company

☒ Affects both Debtors

*** ALL PAPERS SHALL BE FILED IN
THE LEAD CASE, NO. 19-30088 (DM).**

I. INTRODUCTION

AA/Acme Locksmiths, Inc. dba Acme Security Systems ("Acme") provides access control to Debtors' facilities in a manner consistent with federal and state regulation that relate to the facilities in question.

1 Acme objects to the entry of a final order granting the motion for the Debtors to pay
2 Operational Integrity Suppliers because Debtors have not made any progress toward
3 determining which suppliers fall within this category. Inquiries to Debtors are met with
4 responses that management does not know if a party falls within this category and a promise for
5 additional information, which is not forthcoming.

6 In sum, Debtors have asked for a significant amount of discretion because that
7 discretion is ostensibly necessary to operate its business. Debtors' lack of responsiveness and
8 lack of planning to move quickly to make the determination of whether a supplier falls within
9 the definition of an Operational Integrity Supplier demonstrates that Debtors are not in a
10 position to exercise this type of unfettered discretion.

11 Acme requests that the Court continue the hearing on this motion for a period of one
12 month to allow Debtors to take the steps promised in the initial motion – identify and establish
13 a matrix of the Operational Integrity Suppliers. Debtors should at least be in the position of
14 being able to inform suppliers whether they are considered an Operational Integrity Supplier
15 before the Court grants Debtors the virtually unfettered right to favor some creditors over other
16 similarly situated creditors.

17 **II. FACTUAL BACKGROUND**

18 When Debtors filed this motion, they made a very specific representation to the Court:
19 “As of the Petition Date, the Debtors estimate that they owe approximately \$116,200,000 on
20 account of Operational Integrity Supplier Claims . . . of which approximately \$30,100,000 will
21 come due in the first thirty (30) days of the Chapter 11 Cases. (Debtors’ Motion to Pay Safety
22 and Reliability Providers (“Motion”), p. 7, ln. 28 - p. 8, ln. 3.) At the hearing of the interim
23 motion, the focus of many arguments were on what companies the Debtor would determine
24 were characterized as Operational Integrity Suppliers, and whether there would be any ability to
25 challenge the Debtors’ determinations in this regard. Obviously, some creditors feel uneasy
26 about Debtors being granted discretion to treat some creditors differently from other creditors
27 that would otherwise be similarly situated – i.e., unsecured trade creditors.
28

1 Based on the representations made in the motion, it certainly appeared that Debtors had
2 largely identified the Operational Integrity Suppliers, and the process of providing its suppliers
3 with that information would be expedient. Indeed, the motion went on to state: “the Debtors
4 have put into place detailed procedures for identifying and selecting Operational Integrity
5 Suppliers and ensuring that only Operational Integrity Suppliers will be paid pursuant to this
6 Motion.” (Motion, p. 8, Ins. 22-24.)

7 Indeed, the declaration provided in support of this motion states: “The Debtors, with the
8 assistance of their advisors, spent significant time prior to the Petition Date analyzing and
9 reviewing their operations, books and records, accounts payable systems, and prepetition
10 vendor and service provider lists to identify those vendors, suppliers, and service providers
11 that are in fact critical to the Debtors’ operations and public health and safety, the loss of which
12 could materially harm the Debtors’ businesses and/or their customers and the public, in order to
13 determine the Operational Integrity Suppliers.” (Wells Decl., p. 116, Ins. 7 - 12.)

14 As a party that believed it was an Operational Integrity Supplier because it supplies
15 mandated access controls for nuclear and other power facilities, Acme assumed determining
16 whether it qualified would be a relatively simple task. To Acme, the determination is material
17 as to whether and how it continues to supply the Debtors, as it is under no specific contractual
18 obligation to continue to supply the Debtors.

19 All efforts to determine whether it would be considered an Operational Integrity
20 Supplier have been met with little more than a shrug of the shoulders. Counsel for the Debtors
21 have made clear the issue is to be determined by management. Acme’s efforts to obtain an
22 answer from management have led to one of two responses: (1) the contact person does not
23 know; or (2) the contact person states he or she will inquire and provide a response. Acme has
24 never received any response to these inquiries, and understands that other vendors face the same
25 lack of information.

26 It appears the detailed procedures for identifying Operational Integrity Suppliers have
27 not been implemented and may not even exist.
28

1 Before the Court provides the Debtors with the right to provide priority payments to in
2 excess of \$116,000,000 in claims, the Court ought to require the promised mechanism exist.
3 On that basis, Acme requests the Court defer ruling in a final order until Debtors have created
4 the detailed procedures they promised, and informed suppliers whether they qualify as
5 Operational Integrity Suppliers.

6 **III. LEGAL ANALYSIS**

7 As a general rule, a debtor may not favor some creditors of a certain priority class over
8 other creditors of that same class: "Section 507 establishes the priorities of creditors intended
9 by Congress; and section 1123 requires that a chapter 11 plan must 'provide the same treatment
10 for each claim or interest of a particular class.' 11 U.S.C. § 1123. There is no indication that
11 Congress intended the courts to fashion their own rules of super-priorities within any given
12 priority class." (*Matter of B & W Enterprises, Inc.* (9th Cir. 1983) 713 F.2d 534, 537.)

13 The Debtors cite to numerous cases from other circuits where courts permitted payments
14 to certain members of a class of creditors where the business judgment of the debtor established
15 the payments were necessary to the reorganization of the debtor. Those cases hold that a
16 specific showing must be made before such funds are expended. For example, in the
17 *Ionosphere Clubs, Inc.* cited by Debtors, the Court disallowed the expenditure: "This is a large
18 and complex bankruptcy case in its early triage stage. The \$200 million cash reserve that
19 Eastern stated it had as of the filing date should be used only when it is demonstrated that it is
20 necessary and indeed critical that such funds should be expended." (*In re Ionosphere Clubs,*
21 *Inc.* (Bankr. S.D.N.Y. 1989) 98 B.R. 174, 179.)

22 Acme does not contest that Debtors will ultimately be able to make the appropriate
23 showing on a case-by-case basis. Given the fact that, despite its representations, no mechanism
24 is in place to determine what suppliers must be paid on a "necessary and critical" basis, and that
25 Debtors are proposing to expend a vast amount of funds on a purely discretionary basis, Acme
26 objects to the final order being granted under the present circumstance.

1 Instead, this hearing should be continued, and the Debtors should be required to provide
2 the Court with the criteria for making the determination of whether a supplier qualifies as an
3 Operational Integrity Supplier.

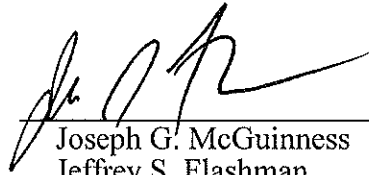
4 **IV. CONCLUSION**

5 Based on the foregoing, Acme objects to the granting of a final order on the Operational
6 Integrity Suppliers motion until such time as Debtors are able to articulate the criteria, and
7 actually identify and notify its vendors of whether such vendors qualify as Operational Integrity
8 Suppliers.

9
10 Dated: February 19, 2019

11 MCCGUINNESS & ASSOCIATES

12
13
14 By



Joseph G. McGuinness
Jeffrey S. Flashman
Attorneys for Creditor
AA/Acme Locksmiths, Inc.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is McGuinness & Associates, 3858 Carson Street, Suite 301, Torrance, California 90503.

**OBJECTION OF CREDITOR AA/ACME LOCKSMITHS, INC. TO FINAL ORDER
GRANTING OPERATIONAL INTEGRITY SUPPLIER MOTION**

SEE ATTACHED SERVICE LIST

XX By overnight delivery by depositing such envelope in a box or other facility regularly maintained by an express service carrier, or delivered it to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for at Torrance, California.

fncl

Patrice McDonald

SERVICE LIST

Debtors' Counsel

Tobias S. Keller
Keller and Benvenuti LLP
650 California St., #1900
San Francisco, CA 94108

Debtors' Counsel

Stephen Karotkin
Jessica Liou
Matthew Goren
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

U.S. Trustee

Office of the U.S. Trustee
Phillip J. Burton Federal Building
450 Golden Gate Ave., 5th Floor., #05-0153
San Francisco, CA 94102